**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED  
UNINTENTIONALLY UNDER 37 CFR 1.137(b)**Docket Number (Optional)  
HO-P01525US0

First named inventor: Lars Abrahmsen

Application No: 08/765,695

Art Unit: 1644

Filed: July 11, 1994

Examiner: R. B. Schwadron

Title: 41986/2 A CONJUGATE BETWEEN A MODIFIED SUPERANTIGEN AND A TARGET-  
SEEKING COMPOUND AND THE USE OF THE CONJUGATECommissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450NOTE: If information or assistance is needed in completing this form, please contact Petitions  
Information at (571) 272-3282.The above-identified application became abandoned for failure to file a timely and proper reply to a notice or  
action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration  
date of the period set for reply in the office notice or action plus any extensions of time actually obtained.**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee – required for all utility and plant applications  
filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

**1. Petition fee**☒ Small entity – fee \$ 750.00 (37 CFR 1.17(m)). Applicant claims small entity status.  
See 37 CFR 1.27.☐ Other than small entity – fee \$ \_\_\_\_\_ (37 CFR 1.17(m))**2. Reply and/or fee**A. The reply and/or fee to the above-noted Office action in  
the form of An Amendment After Final Action (37 C.F.R. §1.116) (identify type of reply):☐ has been filed previously on \_\_\_\_\_☒ is enclosed herewith.B. The issue fee and publication fee (if applicable) of \$ 700.00☒ has been paid previously on July 29, 2005☐ is enclosed herewith.

Page 1 of 2

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750.00 DP

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

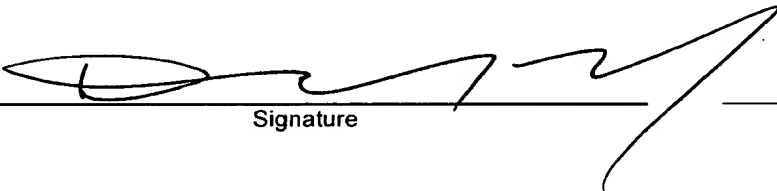
## 3. Terminal disclaimer with disclaimer fee

☐

Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

☒A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ 65.00 for a small entity  
or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time  
is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE. The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D))].



Signature

January 9, 2006

Date

David L. Fox

Typed or printed name

40,612

Registration Number, if applicable

FULBRIGHT &amp; JAWORSKI L.L.P.

Fulbright Tower

1301 McKinney, Suite 5100

Houston, Texas 77010-3095

Address

(713) 651-8231

Telephone Number

Enclosures:

☒

Fee Payment

☒

Reply

☒

Terminal Disclaimer Form

☒

Additional sheets containing statements establishing unintentional delay

☒Other: Petition under 37 CFR 1.183 to waive terminal disclaimer.



Docket No.: HO-P01525US0  
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:  
Lars Abrahmsen

Application No.: 08/765,695

Confirmation No.: 6468

Filed: July 11, 1994

Art Unit: 1644

For: A CONJUGATE BETWEEN A MODIFIED  
SUPERANTIGEN AND A TARGET-SEEKING  
COMPOUND AND THE USE OF THE  
CONJUGATE

Examiner: R. B. Schwadron

PETITION FOR REVIVAL OF APPLICATION ABANDONED UNINTENTIONALLY  
UNDER 37 C.F.R. § 1.137(b)

AND

PETITION UNDER 37 C.F.R. § 1.183 FOR WAIVER OF THE TERMINAL DISCLAIMER  
UNDER 1.137(c)

Commission for Patents  
P O Box 1450  
Alexandria, VA 22313-1450

Applicants petition for revival of the instant unintentionally-abandoned application under 37 C.F.R. § 1.137(b). Pursuant to 37 C.F.R. § 1.137(b)(1-4), Applicants file with this petition statement:

- (1) a check for \$1215.00 including the petition fee of \$750.00 under 37 C.F.R. § 1.17(m),
- (2) an amendment after final rejection under 37 C.F.R. § 1.116,

25611501.1

(3) a showing that the entire period of delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 C.F.R. § 1.137(b) was unintentional,

(4) a petition under 37 C.F.R. § 1.183, including the fee under 37 C.F.R. § 1.17(h), demonstrating an extraordinary situation in which justice requires waiver of the terminal disclaimer requirements of 37 C.F.R. § 1.137(d),

(5) a request for a refund of the filing fee for a Request for Continued Examination, and

(6) a terminal disclaimer required under 37 C.F.R. § 1.137(d) conditioned on denial of the above listed petition under 37 C.F.R. § 1.183.

Pursuant to 37 C.F.R. § 1.137(b)(3), Applicant submits that the abandonment of the instant application was unintentional. Specifically, Applicant mistakenly filed an Request for Continued Examination, rather than a continuation application, in response to a Final Rejection dated September 8, 2003. (See attached EXHIBIT A). The USPTO did not realize the error either and continued examination through to allowance. Applicant paid the issue fee July 29, 2005. Thus, the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. 1.137(b) was unintentional. Applicant respectfully requests the USPTO revive the abandoned application and accept the co-submitted amendment after final rejection. The amendment should bring the specification and claims into the previously allowed form.

Applicant further petitions under 37 C.F.R. § 1.183 for waiver of the terminal disclaimer normally required by 37 C.F.R. § 1.37(d). The terminal disclaimer may be waived in “extraordinary” circumstances in the interest of “justice.” An example of such circumstances is when the abandonment of the application caused no actual delay in prosecution. *See* MPEP

711.03(c)(II)(G). Applicant submits that the instant application falls within this recognized exception and respectfully requests the Commissioner waive the terminal disclaimer requirement. The MPEP clearly states:

In the event that an applicant considers the requirement for a terminal disclaimer to be inappropriate under the circumstances of the application at issue, the applicant should file a petition under 37 CFR 1.183 (and petition fee) to request a waiver of this requirement of 37 CFR 1.183. Such a petition may request waiver of this requirement *in toto*, or to the extent that such requirement exceeds the period considered by applicant as the appropriate period of disclaimer. The grant of such a petition, however, is strictly limited to situations wherein applicant has made a showing of an "extraordinary situation" in which "justice requires" the requested relief. An example of such a situation is when the abandonment of the application caused no actual delay in prosecution (e.g., an application awaiting decision by the Board of Appeals and Interferences during period of abandonment).

MPEP 711.03(c)(II)(G) (emphasis added).

Prosecution was closed on April 29, 2005, the date the Notice of Allowance was issued. Therefore, no part of the entire period of the abandonment of the application caused any delay in prosecution. Therefore, the facts of the present case fit exactly in the MPEP's express example of when a terminal disclaimer should be waived. Therefore, applicants respectfully petition that the requirement for a terminal disclaimer be waived.

Applicant also requests, under 37 CFR 1.26, a refund of the Request for Continued Examination filing fee mistakenly paid. (See EXHIBIT A, pg 2). Please deposit the refund in Fulbright & Jaworski Deposit Account No. 06-2375.

Applicant is submitting a terminal disclaimer required under 37 C.F.R. § 1.137(d) for completeness of the petition to revive. This disclaimer is expressly conditioned on denial of the petition under 37 C.F.R. § 1.183 to waive the disclaimer requirement. Should the terminal

disclaimer be waived, please refund the \$65.00 fee to Fulbright & Jaworski Deposit Account No. 06-2375.

Pursuant to 37 C.F.R. § 1.17(m) the revival petition fee of \$750.00 has been included. Pursuant to 37 C.F.R. § 1.17(f) the petition for suspension of the rules fee of \$400.00 is also enclosed. Pursuant to 37 C.F.R. § 1.20(d) a terminal disclaimer filing fee of \$65.00 is enclosed. Should any other fees be due, or the attached fee be deficient or absent, the Commissioner is authorized to withdraw the appropriate fee from Fulbright & Jaworski Deposit Account No. 06-2375 (P01525US0), from which the undersigned is authorized to draw.

Please date stamp and return the enclosed postcard to evidence receipt of this document.

Respectfully submitted,



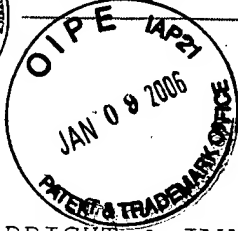
DAVID L. FOX  
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(713) 651-8464  
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Attorney for Applicants

Date: January 9, 2006

# **EXHIBIT A**



UNITED STATES PATENT AND TRADEMARK OFFICE



FULBRIGHT & JAWORSKI, LLP  
1301 MCKINNEY  
SUITE 5100  
HOUSTON, TX 77010-3095

RECEIVED  
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Docket: P0152.5USA  
Client: Active Biotech  
Attorney: DLP

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**OFFICE OF PETITIONS**

In re Application of  
Abrahmsen et al.  
Application No. 08/765,695  
International Filing Date:  
June 7, 1995  
371 Date: July 25, 1997  
Title of Invention:  
CONJUGATE BETWEEN A MODIFIED  
SUPERANTIGEN AND A TARGET-SEEKING  
COMPOUND AND THE USE OF THE  
CONJUGATE

:  
:  
: NOTICE REGARDING  
: IMPROPER REQUEST  
: FOR CONTINUED  
: EXAMINATION  
: AND  
: NOTICE OF ABANDONMENT  
:  
:  
:

Background:

Applicants filed a Request for Continued Examination (RCE) under 37 CFR 1.114 on March 9, 2004 in the above-identified application, which is the National Stage of an international application filed on June 7, 1995. The RCE was improper because the provisions of 37 CFR 1.114 do not apply to an international application filed under 35 U.S.C. 363 before June 8, 1995. See 37 CFR 1.114(e)(3).

A request for continued examination is not a type of new application filing. See Request for Continued Examination Practice and Changes to Provisional Application Practice, Final Rule, 65 Fed. Reg. 50092, 50097 (August 16, 2000). The Office cannot convert an improper RCE to an application, such as a continuing application under 37 CFR 1.53(b) or (d). An improper RCE will not operate to toll the running of any time period set in the previous Office action for reply to avoid abandonment of the application. See Manual for Patent Examining Procedure (MPEP) 706.07(h), page 700-70, subsection III.A., "Treatment of Improper RCE", (8<sup>th</sup> Ed. 2001).

In the instant case, a final Office action was mailed on September 8, 2003. Under 35 U.S.C. § 133, an applicant has six (6) months to reply to an Office action. Upon failure to prosecute the application within six months of notice of the



Office action, the application shall be regarded as abandoned. This statutory requirement may not be waived by the Office. The filing of the improper RCE on March 9, 2004 did not toll the time period set forth in the Office action mailed on September 8, 2003. Thus, the application became **abandoned on March 9, 2004** for the failure to reply to the Office action mailed on September 8, 2003.

The Office mistakenly treated the improper RCE as a proper RCE and allowed examination of the application to continue. A non-final Office action was mailed May 26, 2004. An Amendment was filed September 2, 2004. An Ex Parte Quayle Action was mailed November 17, 2004. A Response After Ex Parte Quayle Action, drawings, and an Amendment were filed January 27, 2005. A Notice of Allowance and a Notice of Allowability were mailed on April 29, 2005, and the Issue fee was received on July 29, 2005. The Office regrets the delay in notifying Applicants of this error.

The application has been withdrawn from issue to process as an abandoned application.

Applicants may file a petition under 37 CFR 1.137(b) to revive the application within **two (2) months from the date of this Notice**. **This time period may not be extended.** Applicants may request a refund of the RCE fees.

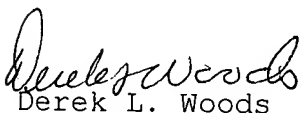
Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

By FAX: (571) 273-8300  
Attn: Office of Petitions

By hand: Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.



Derek L. Woods  
Attorney  
Office of Petitions